

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

17-CR-94-A
ORDER

RAYMOND HOPSON,

Defendant.

The Defendant is currently serving a 60-month sentence after pleading guilty to conspiracy to possess with intent to distribute, and to distribute, 28 grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(B) and 21 U.S.C. § 846. The Defendant did not appeal his conviction or sentence, nor has he filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255.

The Defendant has, however, filed a *pro se* motion for free copies of his sentencing transcript. Docket No. 54. For the reasons stated below, the Defendant's motion is denied without prejudice.

DISCUSSION

The relief the Defendant seeks is governed by 28 U.S.C. § 753(f). In relevant part, § 753(f) provides:

Fees for transcripts furnished in proceedings brought under [28 U.S.C. § 2255] to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

The Second Circuit has held that both “the plain language and necessary operation” of § 753(f) require that “a motion for a free transcript . . . is not ripe until a

§ 2255 motion has been filed.” *United States v. Horvath*, 157 F.3d 131, 132 (2d Cir. 1998). Because, as noted, the Defendant has not filed a § 2255 motion, § 753(f) does not authorize the Court to provide the Defendant with free transcripts.

CONCLUSION

For the reasons stated above, the Defendant’s motion is **DENIED** without prejudice.

Dated: August 31, 2018
Buffalo, New York

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE